



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/06599/2018

THE IMMIGRATION ACTS

**Heard at: Field House
On: 4th April 2019**

**Decision & Reasons Promulgated
On: 8th April 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Pawel [P]
(anonymity direction made)**

Appellant

And

Immigration Officer, Heathrow

Respondent

**For the Appellant: Mr Pipe, Counsel instructed by Baileys Solicitors
For the Respondent: Mr Bramble, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of Poland date of birth 13th October 1983. On the 28th August 2018 he arrived at London's Heathrow Airport and attempted to enter the country using his Polish passport, and asserting free movement rights as an EEA national. The Respondent interviewed the Appellant and upon investigation refused to grant him leave to enter, on the grounds that his exclusion was justified with reference to Regulation 27 of the Immigration (European Economic Area) Regulations 2016 ('the Regulations').

2. In particular the Officer relied upon the fact that the Appellant was convicted of a serious offence in Poland in 2006, namely causing death by dangerous driving/driving under the influence of alcohol. He was sentenced to five years' imprisonment but absconded. He moved to the United Kingdom where, in 2012, he was convicted of various driving offences. He was subsequently served with a European arrest warrant and returned to Poland to serve his sentence. Following his release he had attempted to re-enter the United Kingdom through Calais in 2016 but had been refused entry on public policy grounds. The Appellant had thereafter travelled to the Republic of Ireland where he had lived and worked for about 16 months before managing to enter the United Kingdom undetected. The Immigration Officer accepted that the Appellant had a home, girlfriend and job in London - he was working up to 50 hours per week as a chef - but found the seriousness of the Appellant's convictions to justify exclusion. The Appellant was granted temporary admission.
3. The Appellant appealed to the First-tier Tribunal. The matter came before Judge Grimmett on the 20th December 2018. In a decision promulgated on the 2nd January 2019 the Tribunal accepted that the Appellant had a job in the United Kingdom but found that his exclusion was proportionate. The Tribunal found that he has few ties to the United Kingdom, and noted that no-one appeared at the hearing to speak to the Appellant's life here. Although the Appellant's offending behaviour was largely alcohol related it appeared that he had done nothing to address that. He had caused the death of a friend by drink driving in Poland but it was apparent that he had not learned his lesson, because he had subsequently been convicted of drink-driving in the United Kingdom. There was no evidence that he had sought help for his alcohol problem, and his behaviour in trying to avoid his sentence indicated that he remains a genuine, present and sufficiently serious threat to one of the fundamental interests of society, namely the safety of citizens in the United Kingdom.
4. The appeal was accordingly dismissed.
5. The Appellant appeals to this Tribunal on the following grounds:
 - i) The First-tier Tribunal erred in failing to take material evidence into account, namely the Appellant's oral and written statements to the effect that he deeply regrets his offending behaviour, has not driven since 2012, and that he has been attending meetings organised by 'Alcoholics Anonymous' and seeking help in other ways;
 - ii) In order to justify exclusion under Reg 27 the Respondent had to show that the Appellant poses a current risk. The Appellant has served his sentence for the conviction in Poland and has not offended since 2012. It is submitted that the First-tier Tribunal failed to have regard to those matters, and materially misdirected itself in its consideration of whether the Appellant poses a sufficiently serious risk.
 - iii) The Tribunal failed to direct itself to the fact that the burden of proof lies on the Respondent.

6. Permission was granted on all grounds on the 6th March 2019 by Upper Tribunal Judge Perkins. In respect of ground (i) as it is summarised above, Judge Perkins noted that it is for the Appellant to demonstrate what oral evidence was given before the Tribunal, given that none of the matters referred to in the grounds are referred to in the determination.
7. Before me Mr Bramble accepted that the errors of law alleged were made out. Although it was not clear exactly what evidence was given about rehabilitation Mr Bramble was able to discern from the Presenting Officer's note that the Appellant had mentioned regret and seeking help for his drinking. None of that had been mentioned in the determination. More significantly, the Respondent accepted that the determination does not sufficiently address the key question in the appeal, namely whether the Appellant currently poses a risk. Given that the last offence was some six years ago, Mr Bramble accepted that there was a lack of findings about what might have happened since then. The Respondent accordingly asked me to set the decision of the First-tier Tribunal aside and remit the matter for re-hearing before a differently constituted Tribunal. Mr Pipe concurred that in view of the lack of findings that was the most appropriate disposal.

Decisions

8. The determination of the First-tier Tribunal contains errors of law and it is set aside.
9. The decision in the appeal is to be remade by the First-tier Tribunal, by a Judge other than Judge Grimmett.
10. There is no order for anonymity.

Upper Tribunal Judge Bruce
4th April 2019